

**Director  
Corporate Tax Policy Unit  
Corporate and International Tax Division  
Treasury  
Langton Cres  
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By email: [OMSBBpublicconsultation@treasury.gov.au](mailto:OMSBBpublicconsultation@treasury.gov.au)

Dear Director,

Thank you for the opportunity to submit a response to the consultation of the Treasury Laws Amendment (Off-Market Share Buy-Backs) Bill 2022.

I object to the proposed changes and believe the draft legislation is unfair to Australian companies and all shareholders.

Treasury Laws Amendment (Off-Market Share Buy-Backs) Bill 2022, if applied, will weaken the franking system.

Off-market share buy-backs and selective reductions of capital are important and established capital management tools for Australian companies and their boards. Any changes to these proven practices will negatively impact companies' capital management choices and have unintended consequences.

Under the proposed amendments to off-market share buy-backs, companies would no longer be able to pay fully franked dividends to participating shareholders as part of the buy-back consideration paid. In addition, the government is also proposing to eliminate franking credits permanently to the extent it would have been paid out in a fully franked dividend to shareholders, should a company wish to conduct an off-market share buy-back in the future. So, not only are the government limiting a company's ability to distribute franking credits to shareholders, they are now proposing to permanently take those franking credits away from companies, in turn denying them the ability to distribute legitimate tax payments made on behalf of their shareholders. The above changes were added to the legislation and were not announced in the Federal Budget on 25 October 2022. It is a significant negative addition which looks to further disenfranchise Australian companies and investors.

I implore the government not to look at this proposal in isolation, but rather to view it in conjunction with the submission on franked distribution and capital raising (which closed for submission to your office on 5 October 2022). Together, these proposed changes undermine a system that has supported Australian companies and investors through more than three decades of economic stability and growth. During that time the world has experienced a number of major macroeconomic events such as the global financial crisis and the current system has protected Australian companies, and in turn their shareholders, through these times of economic instability, reducing companies need to take on unnecessary debt. It has encouraged Australian companies to invest in and pay corporate tax in Australia and emboldened Australians to invest locally. This, in turn, has created more jobs for Australians and provided the additional income tax revenue that Treasury and Government are currently seeking.

I believe that both the proposed changes fail to recognise the fundamental principle underlying the franking system and the reason for its creation being the avoidance of double taxation on company earnings. If passed, the proposed change will unfairly target retail

investors, low-income investors and superannuation beneficiaries, while limiting companies' abilities to effectively manage their own capital.

I believe Treasury and Government are underestimating the long lasting and broad-reaching impact these changes will have on Australia and we ask you to re-consider making any changes.

The franking credit system was introduced by then-treasurer Paul Keating in 1985 to stop the double taxation of dividends. Franking credits, or imputation credits, are a tax credit paid alongside company dividends for imputed tax already paid by an Australian company. It is understood that under the current law, a company undertaking an off-market share buy-back can make any part of the purchase price a dividend which can be franked, thus triggering a franking credit debt in the company's franking account.

So, not only is the government further limiting a company's ability to distribute franking credits to shareholders, but it is also now proposing to permanently take those franking credits away from companies, in turn denying them the ability to distribute legitimate tax payments made on behalf of their shareholders. Apparently, Paul Keating has been quoted as saying "Treasury try to remove franking every seven years" and that "dividend imputation revolutionised capital formation in Australia".

It was clearly noted prior to the recent May 2022 Federal election the then-Opposition Leader (Anthony Albanese) and Jim Chalmers repeatedly stated that a future Labor government would not touch franking options.

I am writing as a member of a Self-Managed Superannuation Fund (SMSF) which has in recent times been achieving good growth in the fund due to fully franked dividends providing it with tax credits. I am also an individual shareholder of a few ASX listed shares in both my own name, as well as in trust for my step-grandson; along with acting as a Power of Attorney to an elderly relative – acting in her best interests. The Federal government of the day has always espoused the need for superannuants to maximise their return through their superannuation funds each year i.e., advising members to look at alternative operational superannuation funds achieving significantly higher returns for their members.

It was stated by Chris Bowen in the lead up to the 2019 Federal election "If you don't like our policy on franking (imputation) credits you should vote for another political party" or something similar.

Please contact me if you have any questions on the above submission.

Yours sincerely

Ian H. Day  
Director & Trustee of a Self-Managed Superannuation Fund